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File No. 09-93663

Attorneys for "Secured Creditor",
BAC HOME LOANS SERVICING, LP FKA
COUNTRYWIDE HOME LOANS SERVICING, LP

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:

Case No.: BK-S-09-19424-MKN
Chapter 13

PAUL M. SPRADA AND SUSAN AGNES
SPRADA

Debtors.

**OPPOSITION TO MOTION TO
VALUE COLLATERAL AND "STRIP
OFF" AND MODIFY RIGHTS OF BAC
HOME LOAN SERVICING, LP/BANK
OF AMERICA, NA/COUNTRYWIDE
BANK, FSB, ITS SUCCESSORS
AND/OR ASSIGNS PURSUANT TO 11
U.S.C. 506(A) AND 1322**

Date: December 10, 2009
Time: 2:30 P.M.

COMES NOW, BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME
LOANS SERVICING, LP, a "Secured Creditor" in the above-entitled Bankruptcy proceeding,
hereby submits its Opposition to the Motion to Value Collateral and Strip Off filed by the
Debtors.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. FACTS**

3 On June 4, 2009, the Debtors filed their petition under Chapter 13 of the Bankruptcy
4 Code. The Debtors own the home located at 4908 Stacey Avenue Las Vegas Nevada 89108 (the
5 "Property").

6 The Property is security for a First Deed of Trust in favor of BAC HOME LOANS
7 SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP in the amount of
8 \$198,000.00. (the "first DOT"). The Property is security for a Second Deed of Trust in favor of
9 Countrywide, in the amount of \$47,110.00. Attached to the Debtors' Motion to Value
10 Collateral is a Zillow.com print out indicating that the value of the Property to be the amount of
11 \$173,000. The Motion is seeking an order from this Court determining that the Second Deed of
12 Trust be fully unsecured debt, but also that the First Deed of Trust is secured debt up to
13 \$173,000, and that for any amount in excess of \$173,000, be classified as a general unsecured
14 claim to be paid pro rata with other general unsecured creditors through the Debtors' chapter 13
15 plan. And to also find that "Secured Creditor" is not the holder of the lien on the subject
16 property.

17 **II. ANALYSIS**

18 **A. BECAUSE THE SUBJECT PROPERTY FALLS UNDER AN EXCEPTION TO 11**
19 **U.S.C. 506(a)(1), THE SECURED CLAIM OF "SECURED CREDITOR" ON ITS**
20 **FIRST DEED OF TRUST LIEN CANNOT BE MODIFIED.**

21 11 U.S.C. 506(a)(1) provides in pertinent part:

22 (a) An allowed claim of a creditor secured by a lien on property in which the estate has an
23 interest, or that is subject to setoff under section 553 of this title, is a secured claim to the
24 extent of the value of such creditor's interest in the estate's interest in such property, or to
the extent of the amount subject to setoff, as the case may be, and is an unsecured claim
to the extent that the value of such creditor's interest or the amount so subject to setoff is
less than the amount of such allowed claim.

1 Section 506(d) states in pertinent part, “to the extent that a lien secures a claim against
 2 the Debtors that it is not an allowed secured claim, such lien is void.” Section 506 is a section of
 3 general applicability and a Chapter 13 case allows bifurcation of a claim into secured and
 4 unsecured portions. *Wilson V. Commonwealth Mortgage Corp.*, 895 F.2d 123, 22 C.B.C. 561 (3rd
 5 Cir. 1990). Section 506(d) allows fully unsecured second deeds of trusts to be stripped,
 6 however it does NOT allow first deeds of trusts on the principal residences of Debtors to be
 7 partially stripped or modified in Chapter 13 proceedings since an exception exists in 11 U.S.C.
 8 1332(b).

9 11 U.S.C. 1322(b) states in pertinent part:

10 “(b) Subject to subsections (a) and (c) of this section, the plan may--

11 (1) designate a class or classes of unsecured claims, as provided in [section 1122](#)
 12 of this title, but may not discriminate unfairly against any class so designated;
 however, such plan may treat claims for a consumer debt of the Debtors if an
 individual is liable on such consumer debt with the Debtors differently than other
 unsecured claims;

13 (2) modify the rights of holders of secured claims, other than a claim secured only
 14 by a security interest in real property that is the Debtors’ principal residence, or of
 holders of unsecured claims, or leave unaffected the rights of holders of any class
 of claims;...”

15 According to the landmark U.S. Supreme Court decision in Nobleman v. American
 16 Savings Bank, 113 S.Ct. 2106 (1993), a lien on the primary residence of the Debtors cannot be
 17 stripped in the course of a Chapter 13 bankruptcy if any portion of the interest was secured. In
 18 the case of In re Geyer, 203 B.R. 726 (Bkrtcy.S.D.Cal.,1996), the court held that to be afforded
 19 protections of statute prohibiting Chapter 13 Debtors from reducing undersecured homestead
 20 mortgage to fair market value of mortgaged residence, creditor must be holder of claim that is at
 21 least partially secured. A wholly unsecured debt” Secured Creditor” does not have the
 22 protection of the exception contained in 11 U.S.C. 1322(b) as held in the case of In re Lam, 211
 23 B.R. 36 (1997).

1 In sum, modification of the rights of holders of secured claims, in which the only security
2 is the residence of the Debtors, is not allowed in Chapter 13 proceedings. The exception is
3 where the mortgage is wholly unsecured. *In re Zimmer*, 313 F.3d 1220 (9th Cir. 2002). A wholly
4 unsecured lienholder is not entitled to the protections of 11 U.S.C. 1332(b). However, if ANY
5 portion of the mortgage claim is secured, Section 1332(b) protections will apply and lien
6 stripping or modification is not permissible.

7 Here, it is undisputed that the First Deed of Trust secured the Property in favor of
8 “Secured Creditor” as the lien holder in first position. There is value in the Property as admitted
9 by the Debtors via the claimed fair market value of \$173,000.00 set forth in the moving papers.
10 Because the amount due to “Secured Creditor” is a secured claim, value exists, the lien is a first
11 lien against the property and the property is the residence of these Debtors, the rights of “Secured
12 Creditor” cannot be modified by this Court.

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1 **III. CONCLUSION**

2 Based on the facts and arguments as set forth above, Secured Creditor respectfully
3 requests that this Court deny Debtors' Motion on its First Deed of Trust.

4 WHEREFORE, "Secured Creditor" prays as follows:

5 (1) That Debtors' Motion be denied in part as to the cram down of the First Deed of
6 Trust.

7 (2) For attorney's fees and costs.

8 (3) For such other relief as this Court deems proper.
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11 MILES, BAUER, BERGSTROM & WINTERS, LLP

12 Dated: December 7, 2009 By: /s/ Jeremy T. Bergstrom, Esq.
13 Jeremy T. Bergstrom, Esq.
Attorney for "Secured Creditor"

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CERTIFICATE OF MAILING

The undersigned hereby certifies that on December 8, 2009, a copy of
“Secured Creditor’s **OPPOSITION TO MOTION TO VALUE COLLATERAL AND**
“STRIP OFF” AND MODIFY RIGHTS OF BAC HOME LOANS SERVICING, LP/
BANK OF AMERICA, NA/ COUNTRYWIDE BANK FSB, ITS SUCCESSORS AND/OR
ASSIGNS PURSUANT TO 11 U.S.C. 506(A) AND 1322 was served by depositing a copy of
same in the United States Mail, in a postage prepaid envelope, addressed to:

DEBTORS:

Paul M. Sprada
Susan Agnes Sprada
4908 Stacey Avenue
Las Vegas, NV 89108

ATTORNEY FOR DEBTORS:

Miguel Galvez, Jr. **VIA FAX (702) 636-0466**
333 N. Rancho Dr., #570
Las Vegas, NV 89106

CHAPTER 13 TRUSTEE:

Rick A. Yarnall **VIA FAX (702) 853-4513**
701 Bridger Ave. #820
Las Vegas, NV 89101

JUNIOR LIENHOLDER

Countrywide **VIA CERTIFIED MAIL**
Attn: Officer or Agent
PO Box 5170
Simi Valley, CA 93062

I declare under penalty of perjury under the laws of the State of Nevada that the
foregoing is true and correct.

/s/ Felicia McGhee
An Employee of Miles, Bauer, Bergstrom & Winters, LLP
(09-93663/objaznv.dot/fam)